

REMARKS

The undersigned attorney respectfully thanks Examiner Disler for the telephone interview of September 1, 2009, in which the undersigned attorney discussed presenting a declaration to the Examiner for his consideration attesting to the unobviousness associated with Applicant's present invention.

Applicant has currently amended claims 2 and 18 for clarification purposes. Claim 2 is amended to clarify and specify that the first outlet of the headset apparatus is for positioning adjacent the user's first ear, and that the second outlet of the headset apparatus is for positioning adjacent the user's second ear. A similar amendment is also made in claim 18. No new subject matter has been introduced in making any of these amendments. Entry of these amendments is respectfully requested.

Claim Rejections – 35 U.S.C. § 103

On page 2 of the Office Action, claims 2-3, 5-6, 8-11 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meucci Jr., U.S. Patent No. 6,038,330 ("Meucci Jr."). Applicant disagrees and traverses the rejection in view of the amended claims submitted herewith. As noted above, claim 2 has been amended to clarify that the first outlet of the headset apparatus is for positioning adjacent the user's first ear, and that the second outlet of the headset apparatus is for positioning adjacent the user's second ear. The tubes described in Meucci Jr. are described to provide a sound focusing function, focusing sound from a single transducer to a specific location on the pinna of one of the user's ears. They are not, however, described in any way that would suggest that they could be joined to provide sound to both of the user's ears in a way that would simulate the spatial cues produced by Applicant's headset apparatus. Not

surprisingly, therefore, Meucci Jr. does not describe or suggest in any way that the tubes can be joined “such that tube paths of the at least one first tube and the at least one second tube are formed to meet intermediate the first and second speakers” whereby the first outlet can be positioned at the user’s first ear, and the second outlet can be positioned at the user’s second ear. The Examiner contends, however, that this feature is merely an obvious variation of the designer’s choice based on his need, and that this modification of the tubes to be continuous intermediate the respective first ends with conduit at the user’s ear produced no unexpected result. Applicant strongly disagrees and submits that this feature is not an obvious design choice, but instead allows the first and second speakers to be separately positioned and spaced along the sound path of the first and second tubes as defined in claim 2 to allow for Applicant’s headset to make use of spatial cues such as Interaural Time Difference (ITD) and Interaural Level Difference (ILD), which are important for simulating 3D sound. To support his position, Applicant submits herewith a Declaration by Sean Murphy which describes the importance of the distinction between Applicant’s claimed invention and the teachings of Meucci Jr. In view of the amendment and comments made herein, taken together with the attached Declaration of Sean Murphy, Applicant respectfully submits that the teachings of Meucci Jr. do not render claim 2 obvious, nor claims 3, 5-6, 8-11 and 14-18 which are dependent upon claim 2. Applicant respectfully requests reconsideration and withdrawal of the rejection.

On page 6 of the Office Action, claim 7 is rejected under 35 U.S.C. § 103(a) alleging that this claim is unpatentable over Meucci Jr. in view of Lin, U.S. Patent No. 6,084,976 (“Lin”). Applicant strongly disagrees and traverses the rejection in view of the amended claims submitted herewith. Claim 7 is dependent on claim 2, and therefore incorporates all of the subject matter thereof. Accordingly, the remarks and Declaration discussed above with respect to claim 2 also

apply to claim 7, which further defines the speaker chamber of claim 2 as a vented or ported chamber. The Examiner contends that Lin discloses a vented or ported speaker chamber, and that this subject matter when combined with Meucci Jr. renders the subject matter of claim 7 obvious. However, Lin does not describe or suggest a set of tubes as defined in claim 2 which can be joined “such that tube paths of the at least one first tube and the at least one second tube are formed to meet intermediate the first and second speakers” whereby the first outlet can be positioned at the user’s first ear, and the second outlet can be positioned at the user’s second ear. As a result, Lin adds nothing to Meucci Jr. that would, by combination of these references, render any of the instant claims obvious. Applicant respectfully requests reconsideration and withdrawal of the rejection.

On page 7 of the Office Action, claims 12-13 and 21 are rejected under 35 U.S.C. § 103(a) alleging that these claims are unpatentable over Meucci Jr. in view of Yamagishi, U.S. Patent No. 5,459,290, (“Yamagishi”). Applicant disagrees and traverses the rejection in view of the amended claims submitted herewith. Claims 12, 13 and 21 are dependent on claim 2, either directly or indirectly, and therefore incorporate all of the subject matter thereof. Accordingly, the comments and Declaration discussed above with respect to claim 2 also apply to these claims. Claim 12 specifies that the headset apparatus of claim 2 comprises at least one bass speaker adjacent the user ear, and claim 13 further specifies that the at least one bass speaker is housed within an ear engaging member. Claim 21, on the other hand, specifies that the headset apparatus comprises a slider joint between the ear engaging members and the first and second outlets for enabling adjustment of a connection length between the ear engaging members and the first and second outlets when the user ear is moved relative to the headset apparatus.

The Examiner contends that Yamagishi discloses a headset having a bass speaker adjacent a user's ear and housed within an ear engaging member, and with a slider joint to enable adjustment of the connection length between the ear engaging members, and that this subject matter when combined with Meucci Jr. renders the subject matter of claims 12, 13 and 21 obvious. However, Yamagishi does not describe or suggest a set of tubes as defined in claim 2 which can be joined "such that tube paths of the at least one first tube and the at least one second tube are formed to meet intermediate the first and second speakers" whereby the first outlet can be positioned at the user's first ear, and the second outlet can be positioned at the user's second ear. As a result, Yamagishi adds nothing to Meucci Jr. that would, by combination of these references, render any of the instant claims obvious. Applicant respectfully requests reconsideration and withdrawal of the rejection.

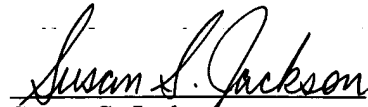
On page 8 of the Office Action, claims 19-20 are rejected under 35 U.S.C. § 103(a) alleging that these claims are unpatentable over Meucci Jr. Applicant disagrees and traverses the rejection in view of the amended claims submitted herewith. Claims 19 and 20 are dependent on claim 2, either directly or indirectly, and therefore incorporate all of the subject matter thereof. Accordingly, the comments and Declaration discussed above with respect to claim 2 also apply to these claims. Claim 19 specifies that the first and second speakers of the headset apparatus are front-left and front-right speakers and the first and second tubes connected adjacent thereto terminate in the anterior portion of left and right ear cups respectively, and the third and fourth speakers are rear-left and rear-right speakers and the third and fourth tubes connected adjacent thereto terminate in the posterior portion of left and right ear cups respectively. Claim 20 specifies that the headset apparatus further comprises an electronic controller to control emissions of the first and second speakers. The Examiner contends that the concept of

incorporating an electronic controller to control speaker emissions is well known in the art, and that the configuration of the speakers and tubes defined in claim 19 is merely an obvious design choice. However, the Examiner offers no evidence or suggestion in the prior art that a set of tubes as defined in claim 2 can be joined in a headset design “such that tube paths of the at least one first tube and the at least one second tube are formed to meet intermediate the first and second speakers” whereby the first outlet can be positioned at the user’s first ear, and the second outlet can be positioned at the user’s second ear. As a result, Meucci Jr. cannot be considered to render any of the instant claims obvious. Applicant respectfully requests reconsideration and withdrawal of the rejection.

As a further note, the headphones that are subject of the present invention are visually illustrated at Applicant’s company website (<http://www.psykoaudio.com/>) which has images of the headphones and commentary by the inventor Mr. Hildebrandt. Applicant submits, however, that if the Examiner is of the opinion that seeing the headphones firsthand (even after having seen the video) is either necessary or desirable, please contact the undersigned so that we can subsequently provide you with the headphones for your consideration with this submission.

In view of the foregoing, it is respectfully urged that the present claims are in condition for allowance and reconsideration is requested. An early notice to this effect is earnestly solicited. Should there be any questions regarding this application, the Examiner is invited to contact the undersigned at the number shown below. In the event that the Office determines that additional fees are due, the Office is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 18-1215.

Respectfully submitted,

A handwritten signature in cursive script, reading "Susan S. Jackson", written over a horizontal line.

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Enclosures

Petition for Two Month Extension of Time
Rule 132 Declaration of Sean Murphy